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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,290	05/23/2005	Koji Fujita	KIT 377 (10415624)	4479
24972	7590	09/15/2006	EXAMINER	
FULBRIGHT & JAWORSKI, LLP			KRECK, JOHN J	
666 FIFTH AVE				
NEW YORK, NY 10103-3198			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/517,290	FUJITA, KOJI
	Examiner John Kreck	Art Unit 3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 August 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-6,8-14 is/are rejected.
- 7) Claim(s) 2 and 7 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

The amendment dated 8/25/06 has been entered.

Claims 1-14 are pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 10-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 10: it is unclear how the wall member is formed in advance of the wall member being formed.

Regarding claims 11-14, these claims purport to depend from claim 11. Since claim 11 purports to depend from itself, these claims are unclear.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 3, 4, 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwyer, et al. (U.S. Patent number 6,357,968) in view of JP2001-200236A.

Dwyer teaches a construction comprising a wall member having permeability.

Dwyer teaches the reactive nature of the wall (e.g. column 8, lines 16-67), for the purpose of preventing spread of contamination in the soil, but lacks the rare earth.

JP2001-200236A teaches that rare earth compound (cerium oxide) is effective to insolubilize arsenic. One of ordinary skill in the art would have recognized that insolubilizing arsenic would be desirable to prevent spreading of arsenic pollution. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Dwyer construction to have included a rare earth, as called for in claim 1. With regards to the new limitation of "uniformly mixed"; Dwyer teaches the reactive compound is to be mixed in the slurry. One of ordinary skill in the art would have understood that uniform mixing would have been proper, since the wall would not have been effective if the compound were not uniformly mixed.

Dwyer teaches the water absorptive substance as called for in claim 3. See col. 3, lines 60-65.

With regards to claim 4: Dwyer teaches gravel (col. 3, line 52); one of ordinary skill in the art would have understood the teaching of JP2001-200236A to suggest a rare earth compound with particles smaller than gravel, since small particles are well known to react more quickly and completely than large particles; thus the limitation of claim 4 would have been obvious.

With regards to claim 6, 8, and 9: JP2001-200236A plainly discloses the ceric oxide hydroxide.

2. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dwyer and JP2001-200236A as applied to claim 3 above, and further in view of Pelot, et al. (U.S. Patent number 6,699,321).

Dwyer lacks the glass cullet, but discloses cement or concrete generally.

Pelot teaches that glass cullet may be advantageously be used in concrete compositions, in order to recycle the glass. It would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Dwyer construction to have included glass cullet, in order to recycle the glass waste.

#### ***Allowable Subject Matter***

3. Claims 2 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

4. Applicant's arguments filed 8/25/06 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208

USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's assertion that the references lack the "uniformly mixed" feature; this is treated above, in the statement of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

5. In response to applicant's assertion that there is no reason for one of ordinary skill in the art to make the proposed combination: Dwyer plainly teaches the usefulness of adding a reactive compound to a wall. JP2001-200236A teaches a compound (apparently unknown to Dwyer) which is useful for arsenic contamination. One of ordinary skill in the art, facing the problem of arsenic contamination, would have found the combination obvious.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042. The examiner can normally be reached on Mon-Thurs 530am-2pm; Fri: telework.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John Kreck  
Primary Examiner  
Art Unit 3673

12 September 2006